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tion whether Russell was laboring under a mistake of fact or one of law. The report is unfortunately too scanty for a clear decision. And the question is perplexing enough when it is noticed that all law from the point of view of its existence is a question of fact. It may be stated generally, however, that if with full knowledge of the facts one is in error as to the true rule of law to be applied, or if, laboring under an erroneous impression that a certain state of facts exist, one is in error as to the true rule of law to be applied to those supposed circumstances, the mistake is one of law. Otherwise it is a mistake of fact. If, then, in the present case the defendant erroneously thought that this certificate of divorce without more was a legal annulment of his marriage by the law of Arkansas, he was certainly to be convicted. If, however, he was led to suppose through fraud that a proper course of legal proceedings had taken place, a pure mistake of fact negating a criminal intent should have led to his acquittal.

CONSTRUCTIVE MURDER.—It has been accepted generally as a correct rule of law that one attempting to procure an abortion by means of drugs or instruments is guilty of murder if the woman dies as a result of such attempt. The rule is concisely stated in 1 E. P. C. 264, and has been since approved or followed in the English cases. *Rex v. Russell*, 1 Moo. C. C. 356; *Reg. v. Gaylor*, Dears. & B. C. C. 288. On this side of the water the understanding seems to be substantially the same. *Commonwealth v. Keeper of Prison*, 2 Ashm. 227. In *Commonwealth v. Parker*, 9 Met. 263, the view is clearly expressed that when an attempt of this kind is made either by administration of drugs or by application of instruments the one making the attempt is guilty of murder if the death of the woman ensues. Nor will the consent of the victim remove the imputation of malice in an act unlawful in purpose and dangerous to life.

In the face of so sound a principle the proceeding of Mr. Justice Darling at the Chester Assizes on March 6th is noteworthy. He had under consideration the facts in the case of one Upton, noted in L. T., March 11th, 1899. The defendant was charged with the murder of a woman whose death was the result of an attempted abortion. The prisoner was clearly within the law, but the Court without questioning the validity of the rule advised the Grand Jury not to return a true bill for murder if they thought that the wound was inflicted by the defendant with the intention only of procuring the abortion and with no intention or desire in any way to effect the death of the woman. The ground on which such directions were justified was dependent wholly upon the previous experience attendant upon convictions of persons for this form of crime. Practice had shown that sentence was passed only to be commuted later by reason of the finding that there was no actual intention to murder.

Whatever may be the outcome of this initiative it is not easy to see just how the circumstances call for an interference with the legislative prerogatives by the judiciary. The rule itself is well grounded in reason according to the principles governing the conduct of criminal prosecutions, and the authorities do not dissent in its application. There seems to be no justification then for the adoption of such means to effect so radical a departure.